

This letter discusses issues related to the sales tax exemption for Tangible Personal Property Purchased for Use or Consumption within an Enterprise Zone. (This is a PLR.)

December 22, 2005

Dear Xxxxx:

This letter is in response to your letter dated November 1, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.1120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to ABC for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither ABC nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

On behalf of our client ABC (hereinafter referred to as 'ABC' or 'our client'), we respectfully request the issuance of a private letter ruling by the Illinois Department of Revenue pursuant to 2 Ill. Adm. Code 1200.110.

General Information

1. This Private Letter Ruling ('PLR') is not requested with regard to hypothetical or alternative proposed transactions. This PLR is requested to determine the sales and use tax consequences of the actual business practice of the Company.
2. The Company is not currently engaged in litigation with the Department with regard to this or any other tax matter.

3. The Department has not previously ruled regarding this matter for the Company. Neither the Company nor FIRM has submitted the same or similar issue to the Department on behalf of the Company.
4. We are aware of no authority contrary to the authorities referred to and cited below.

Statement of Facts

ABC is a business located in Illinois. ABC is designated as a 'high impact business' pursuant to Section 5.5 of the Illinois Enterprise Zone Act. (See 20 ILCS 65/5.5) ABC engages in manufacturing in CITY, Illinois. CITY is within the area in which ABC is designated as a high impact business. ABC makes purchases of coal. ABC self-assesses tax on the coal purchases and remits the tax directly to the Illinois Department of Revenue.

The coal purchased by ABC is burned to generate steam. The steam generated by the burning of the coal is used to power machinery and equipment that qualifies for the manufacturing machinery and equipment exemption from the ROT, and to provide heat to production facilities and office facilities.

ABC is regularly audited by the Illinois Department of Revenue. Recently, ABC concluded a series of sales tax audits for January 1996 through March 2001, April 2001 through June 2002, July 2002 through November 2003 and November 2003 through April 2004. Each audit was concluded on an agreed basis through the execution of an Illinois Department of Revenue Form EDA-105.

Requested Rulings

- A. A portion of the coal purchases made by ABC for use in CITY are exempt from Illinois sales and use taxes pursuant to the High Impact Business exemptions from the Retailers' Occupation Tax and Use Tax acts.**

As a high impact business, ABC is entitled to an exemption from the Retailers' Occupation Tax ('the ROT') with respect to purchases of tangible personal property from retailers, if the tangible personal property is to be used or consumed by ABC, a high impact business, in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease. (35 ILCS 120/1d)

The tangible personal property eligible for the high impact business exemption must be used in a manufacturing or assembling process, but is not limited to machinery and equipment. (86 Ill. Adm. Code 130.1951(g)(4)). Section 130.1951(g)(5)(F) of Illinois Department of Revenue ('the Department' or 'the IDOR') rules states that 'any fuel, such as coal, diesel oil, gasoline, natural gas, artificial gas or steam that would be subject to Retailers' Occupation Tax or Use Tax liability when sold at retail is exempt from those taxes when sold for use as fuel for machinery and equipment that qualifies for the manufacturing machinery and equipment as set out in Section 130.330 of this Part.' Section 130.1951(g)(5)(F) of the IDOR rules is consistent Section 3-65 of the Use Tax Act which provides 'if the seller of tangible personal property for use would not be taxable under the Retailers' Occupation Tax Act despite all elements of the sale occurring in Illinois, then the tax imposed by this Act does not apply to the use of the

tangible personal property in this State.’ (35 ILCS 105/5-65) Pursuant to Section 3-65 of the Use Tax Act, ABC is entitled to the high impact business exemption with respect to purchases of tangible personal property in situations in which ABC does not pay tax to suppliers and, absent the exemption, would be required to self-assess and pay use tax to the IDOR.

Section 130.1951(g)(7)(H) of the IDOR rules provides that ‘tangible personal property and fuel used or consumed in general production plant ventilation, heating, cooling, climate control or illumination, not required by a manufacturing process,’ is ineligible for the exemption from tax.

As explained above, ABC purchases coal that is burned to generate steam. Approximately fifty percent (50%) of the steam generated by the burning of the coal is used or consumed in buildings devoted to manufacturing. Of that amount, a portion is used or consumed as fuel for machinery and equipment that qualifies for the manufacturing machinery and equipment exemption and a portion of the steam is used for climate control. As noted above, Section 130.1951(g)(7)(H) provides that the exemption for fuel does not extend to fuel used for climate control that is not required by the manufacturing process. At its CITY facilities, ABC is a manufacturer of pharmaceuticals and reagents for the diagnostic business. ABC is required by government regulation to adhere to strict standards in the manufacturing process and is subject to government inspection and testing to ensure that these standards are followed. The manufacturing process for pharmaceuticals and reagents requires strict temperature control. All of the steam generated for use in the ABC buildings devoted to manufacturing, including the steam required for climate control, is required by the manufacturing process. Therefore, all of the coal burned to produce steam for the use in buildings devoted to manufacturing qualifies for exemption.

B. ABC may file refund claims for tax paid in error on coal purchases made after June 30, 2002.

ABC recently concluded a number of agreed sales tax audits. The first of the sales tax audits included taxable periods prior to June 30, 2002. As a result, the periods included in the first audit were periods subject to the Tax Delinquency Amnesty Act (‘the Amnesty Act’) (35 ILCS 745/1 *et seq.*). The Amnesty Act provided for an amnesty program in Illinois from October 1, 2003 through November 15, 2003 for taxable periods after June 30, 1983 and before July 1, 2002. (35 ILCS 745/10). According to the terms of the Amnesty Act, a taxpayer that paid all delinquent taxes from the taxable periods covered by the amnesty program within the amnesty period was entitled to an abatement of penalties and interest that would have otherwise been applicable.

Concurrently with the first audit, the IDOR audited periods subsequent to the taxable periods subject to the Amnesty Act. As noted above, the later audits were concluded by the execution of separate forms EDA-105.

The IDOR adopted emergency rules at 86 Ill. Admin. Code 521 to implement the Amnesty Act.¹ No permanent rules were adopted by the IDOR. Therefore, the

¹ The Illinois Administrative Procedure Act provided that emergency rules are effective for 150 days. (5 ILCS 100/5-45(c)). The Amnesty Act rules became effective on September 11, 2003.

emergency rules are the best guide to the various positions taken by the IDOR in the course of implementing the Amnesty Act. The Amnesty Act rules provided that a taxpayer that agreed to pay all outstanding taxes within the applicable time period obtained a waiver of penalties and interest. The amnesty rules required that as a condition of participation in the amnesty program, a participating taxpayer agreed to several conditions: 1) the taxpayer relinquish all rights to contest the tax liability that is being paid; 2) except as provided in certain limited circumstances, the taxpayer may not claim a refund of the money paid or protest the Department's denial of such a claim; 3) the taxpayer will promptly correct any underpayment of the tax liability; and 4) the taxpayer cannot withdraw from the Amnesty Program. 86 Ill. Admin. 521.105(c).

ABC has determined that it overpaid self-assessed tax for post-amnesty periods that were audited concurrently with the amnesty periods that were the subject of the first audit. ABC seeks a ruling that it is entitled to seek a refund of a portion of the taxes it paid during these post-amnesty periods. ABC does not seek a refund of any portion of the taxes it paid for the first audit, which consists of periods covered by amnesty.

Request for a Conference

We respectfully request a personal conference to discuss these matters orally, if the Department believes such may be helpful or if the Department of Revenue may otherwise render a ruling contrary to our client's position.

If you have any questions or would like to discuss this matter further, please contact me at your convenience.

DEPARTMENT'S RESPONSE

The Retailers' Occupation Tax does not apply to retail sales of tangible personal property if the tangible personal property is to be used or consumed by a high impact business in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease. (35 ILCS 120/1d) The exemption is not limited to machinery and equipment. The Department's regulation at 86 Ill. Adm. Code 130.1951(g)(5)(F) provides that "any fuel, such as coal, diesel oil, gasoline, natural gas, artificial gas or steam that would be subject to Retailers' Occupation Tax or Use Tax liability when sold at retail is exempt from those taxes when sold for use as fuel for machinery and equipment that qualifies for the manufacturing machinery and equipment exemption as set out in Section 130.330 of this Part." Section 130.1951(g)(7)(H) of the rules provides that "tangible personal property and fuel used or consumed in general production plant ventilation, cooling, climate control or illumination, not required by a manufacturing or assembling process" is ineligible for the exemption from tax.

ABC was certified as a High Impact Business effective June 15, 2001. ABC purchases coal that is burned to generate steam. A portion of the steam is used or consumed as fuel for machinery and equipment that you have indicated qualifies for the manufacturing machinery and equipment exemption. Under 86 Ill. Adm. Code 130.1951(g)(5)(F), the coal used to generate this steam qualifies for the exemption from tax.

A portion of the steam is used for climate control in buildings devoted to manufacturing pharmaceuticals and reagents for the diagnostic business. You have indicated that strict temperature control is needed for this manufacturing process. Use of the steam is required for the manufacturing

process, and as such is not excluded from the exemption by Section 130.1951(g)(7)(H). As a result, the coal used to generate the steam for required climate control areas in buildings devoted to the manufacturing process also qualifies for the exemption. Coal used to generate steam in other areas does not qualify.

The Tax Delinquency Amnesty Act required that the Department of Revenue establish an amnesty program applicable to all Illinois taxes collected by the Department. The amnesty program lasted for the period from October 1, 2003 through November 15, 2003, and applied to all eligible taxes due from the taxpayer with respect to any taxable period ending after June 30, 1983 and prior to July 1, 2002. See 35 ILCS 745/1 et seq. Under the emergency rules in effect at the time, a participating taxpayer agreed to relinquish all rights to contest the tax liability that it paid subject to the program. ABC participated in the Tax Delinquency Amnesty program. As a result, ABC may not contest the tax liability that it paid subject to the Amnesty program. However, the Tax Delinquency Amnesty program does not prevent ABC from contesting its tax liability for tax periods beginning from July 1, 2002 forward.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

If you have further questions concerning this Private Letter ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Martha P. Mote
Associate Counsel

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